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## BUSINESS NOTICES.

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## GAZETTE

VOL. VII.-NO. 30.

HONOLULU, WEDNESDAY, AUG. 9, 1871.

BUSINESS NOTICES.

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CHAIN CABLES.—All sizes, from § to 15-8 receiving ten dollars adding inch, in Bond or duty paid. For sale by BOLLES & CO. following receipt, viz.:

Supreme Court, July Term, 1871. REPORT HARTWELL, J.

JOHN, O. DOMINIS HT AL. VS. JAMES CAMPHELL HT ALT. Trespass de bonis asportatis. Jury vaived. FINDINGS AND OPINION OF THE COURT. &

The plaintiffs complain that the defendants wrongfully took and converted to their own use, ton of sugar produced from the same. about April 20, 1871, certain sugar cane then growing on the land of Apauhua, Lahaina, said cane being the property of the plaintiffs, and in their possession, and lay their damages at \$250. The answer is the general issue. The defendants also moved the Court to dismiss the case on the ground that His Majesty the King, one of the parties plaintiff, can neither sue nor be sued in any court or tribunal of this realm. The question of law raised by this motion is reserved for the

consideration of the full Court. The facts in the case I find to be as follows, Sept. 5, 1869, articles of copartnership were

entered into at Honolula, by John O. Dominis, acting for His Majesty the King, Ferd. W. Hutchison, James Makee and Z. S. Spalding, for manufacturing sugar at Lahains, under the style her husband had worked the cane. The defendof the West Mani Sugar Association, said Spalants paid them \$50, and took the following ding being constituted managing agent for the firm, and authorized, among other things, to lease land and make purchases for the firm business. Oct. 8, 1869, the following agreement was duly executed, viz. :

"This Agreement made and entered into this 8th day of October, 1870, by and between a certain Association doing business in Lahaina, Island of Maui, Hawaiian Islands, under the name and style of the WEST MAUI SUGAR ASSO-CIATION, parties of the first part, and Kealo. (k.) of Lahaina, Island of Mani, party of the second part. WITNESSETH: That the said party of the second part, for the consideration hereinafter mentioned, doth hereby covenant, promise and agree with the parties of the first part, that he will break up, plant and well and faithfully culti-Islands, and described as follows, to wit: One Ahapuna of Apauhaa, containing 134 acres or parcel of land in the Ahupuna of Apuuhua, con- thereabouts, the property of Namaka, deceased, taining 134 acres, the property of Namaka, (k.) which said contract was made with the full apnow occupied and cultivated by Kealo, (k.) con- proval of said Namaka; and that under said taining one and one fourth acres or thereabouts. Such planting and cultivation of sugar cane of sugar cane, by said Kealo, and by him legally thereon to be commenced within sufficient time and rightfully sold to this Association under date from this date to mature a crop fit for grinding, of Nov. 10, 1870.

"That when the said several crops of sugar cane, so to be planted, grown and cultivated as aforesaid, shall be ripe and in fit condition to be manufactured into sugar, the party of the second part doth agree to put the same in order for cutting, and to make ready for grinding, and deliver the same to the parties of the first part at the prices hereinafter specified, and the parties of the first part do agree to pay for the same as hereinafter set forth.

" And the party of the second part doth hereby itions of this agreement, or any of them, as hereinbefore specified, at any time within the period aforesaid, then this agreement, at the option of the parties of the first part, shall be lease of the aforementioned premises for and during the then unexpired term of this agreement, and the said parties of the first part, their agents or servants, are hereby authorized and empowered then and in such case to enter into and upon and occupy the aforementioned and described land and premises and cultivate sugar cane thereon according to the conditions herein-THE UNDERSIGNED having been apand to deduct all such sums of money as may be paid by them for such cultivation from the proceeds which would have accrued to the party of the second part according to the terms of payment hereinafter specified to be paid to the party above Company, have been aetherized to invers risks of the second part if he should have cultivated. Cargo, Freight and Treasure, by Coasters, the cane as above; and the parties of the first of the second part if he should have cultivated part hereby covenant, promise and agree to receive from the party of the second part all such sugar cane as may be raised, grown, cultivated and delivered, and such sugar cane as may be THRE UNDERSIGNED having been ap- grown by themselves by virtue of any clause of this agreement, for the term of seven years from the maturing of the crop of 1870, and to pay for the same at the rate of seventy dollars per acre for case producing two tons of sugar per acre, and for cane producing more or less than two tons of sugar per acre, at the rate of thirty-five dollars per ton, the same to be estimated by weighing and gauging the juice. And it is hereby especially and mutually agreed, that this agree ment is made a lies upon the land herein abovedescribed, which said land is intended to be bound and is hereby bound for the fulfillment of

" And for the true and faithful performance all and every of the covenants and agreements above mentioned, the parties to these presents bind themselves, each unto the other, in the sum of one hundred dollars as liquidated damages to be paid by the failing party.

"In witness whereof the parties to this agree ment have hereto set their hands and seals this 8th day of October, 1869. THE WEST MAUI SUGAR ASSOCIATION

By Z. S. SPALDING, [Scroll.]

[Scroll.]

KEALO, X

Signed, sealed and delivered in the presence of AND. J. LAWRENCE, PHILIP MILTON."

Namaka, owner of the said land, was present when the said agreement was executed, and and Manila CICARS! when asked by the said Kealo to sign the same. THE BEST SMOKING AND CHEWING said he would not, because it was Kealo who was to work the cane. Kealo was Namaka's son-inlaw, and lived with him on his land directly adjoining the cane lot. Namaka died at Honlolu, Oct. 20, 1869, leaving a will which was admitted to probate July 8, 1871, by which all his property is devised to his widow and children. Kealo the crop sold under the agreement of Oct 8, 1869, was delivered to the plaintiffs. Kealo continged to occupy and cultivate the land, and Nov. 10, 1870, made an oral agreement with the plaintiffs, whereby he sold them that year's crop, receiving ten dollars advance, and giving the

\$6.00 PER YEAR. " Received, Lahaina, Mani, Nov. 10, 1871, from the West Maui Sugar Association, the sum of Ten Dollars, the same being an advance upon the crop of sugar cane now being cultivated by me upon the land known as Apathua, said crop Hall is endeavoring to establish : being hereby sold unto said Association for and

KEALO, [his x mark.] "Signed and explained in the presence of E.

Mayor." Kealo continued to cultivate this cane until the return from Honolulu of Namaka's widow, Kanui, with her second husband, Opanui, early in April, 1870. Kanni then applied, with Kealo, to the plaintiffs for some money, and failing to obtain this, Kanui, with her husband, proceeds to the plaintiffs and shows them the articles of agreement between Kealo and the plaintiffs. The defendants, not regarding that agreement as in force after Namaka's death or as binding on his heirs, bought the cane of them, which Kealo had planted and cultivated until a fortnight previous to this last sale; during which fortnight Keelo had not lived on the land, but Kanni and

receipt, viz. : " 850.00. Rec'd from Messrs. Campbell & Turton the sum of Fifty Dollars in full for two pieces of cane situated in Apauhus, Wainee, Lahaina, 1 acre more or less.

Lahaina, April 18, '71. Rec'd Paym't

OPUNUT, KANUI X Kaha."

T. L. HANAIKE." The plaintiffs learning that the defendants' men were proceeding to take off this cane sent to them the following letter, viz. :

" Lahaina, April 20, 1871. Messrs. Campbell & Turton, Lahaina, Maui: GENTLEMEN: Please take notice that the West vate in sugar case the following land situate in Mani Sugar Association hold a contract with a the Dist. of Labaina, Island of Mani, Hawaiian native named Kenlo for a piece of land in the contract a crop has been cultivated and matured,

for the year 1870, and to be continued each year | Any infringement of the rights of this Assothereafter for the term of seven years next ciation in said matter will be dealt with according to law.

I am, Gentlemen, yours, &c.,

Z. S. SPALDING, For the West Mani Sugar Association." On receipt of this letter the defendants offered to make Kanni refund the \$40 she had received, and to pay back the \$10 which the plaintiffs had that of the Suez route, and if the through trip is advanced to Kealo, which offer was declined. | made in forty-five days as expected, the arrival in The cane was taken off by the defendants the England will alternate too. Nothing is decided same day, and contained fully two and one half as to subsidy, but Mr. Hall has done a good tons of sugar, worth \$250 dollars in the market. stroke in engaging Mr. Parkes as his traveling covenant and agree with the parties of the first Deducting \$35 a ton, the price to have been agent. Mr. Parkes has an Australian reputation

there is no evidence. to the defendants a written lease of said land for | bourne and has gone on to Adelaide. From his the term of five years from April 18, 1871, for speech in the former city we gather that Mr. Hall understood, considered and become a covenanted themselves and the minor heirs, of whom they had been appointed guardians. The rent for the hopes to gather up in fragments from the differ-

entire term was \$80. Under the first agreement with Kealo, the plaintiffs paid him \$87 for his crop, of which he paid \$10 on debt of Namaka's. Soon after Na- Honolulu, and does not despair of getting somemaka's death, the widow, Kanui, made a short thing from the United States and England, to visit at Lahaina, returning immediately to Honclulu, and at no time, until last April, appearing to object to Kealo's occupation of the premises

and enlitivation of the land Namaka and his heirs, because they are not parties to the agreement. To the ruling of the taken and allowed. To the further objection by the defendants' counsel, to evidence of Namaka's assent to the said agreement, on the ground that the terms of a written agreement can not be varied or enlarged by parole, and that the owner's parole license to plant and sell cane for seven Frauds, parts 4 and 5, Sect. 1053, Civil Code, the Court ruled, that a parole license to execute a written lease would not be good, but that such license might authorize one to plant and sell a crop, provided the agreement were to be performed within one year.

In accordance with this ruling, the articles of of Namaka are not to their full extent binding on his heirs. But the fact that Namaka allowed Kealo to occupy and cultivate the land, and assented to the contract for cultivation and sale of cane upon his land, operates to create a day by appointment, with the members of the tenancy at will, or at least a license to plant, cultivate and sell a cane crop within a year from the making of the agreement. In either case, Kealo was entitled to the crop which he planted and worked before Namaka's death, and which in a vote of the small sum (£2,000) asked from fact he delivered to the plaintiffs.

The conduct of Kanui in allowing Kealo to continue to occupy the land, and to cultivate another crop, knowing as she may be presumed to have known, the agreement of Oct. 8, 1869, places it out of her power either to treat Kealo as a trespasser, or to claim any right in the crop which he had raised under these circumstances. She could not by sending Kealo away from the land acquire any title to that crop, even against him, still less as against the plaintiffs, to whom he had conveyed all his title. Kanni having no legal claim on this crop, conveyed none to the defandants.

Authorities for the above may be found in Washburn's Real Prop., (ed. 1868,) Washburn's Easements, Browne's Statute of Frauds, Taylor's Land. and Tenant, and Parson's Contracts, but as I understand that the case will go before the cultivated the cane after Nameka's death, and full Court on all these points, I do not review

Judgment is ordered for the plaintiffs in the

sam of one hundred and sixty-two dollars and fifty cents (\$162.50,) and costs. ALFRED S. HARTWELL.

Justice of the Supreme Court. Dated Honolule, H. I., July 25, 1871.

Hawaiian

RATES OF ADVERTISING. Proce Measured in 1 w. 1 m. 2 m. 3 m. 6 m. 12 m.

The Rival Australian Mail Service.

The Melbourne correspondent of the Sydney Mail gives the following regarding the rivalry between Mr. Webb's line and that which Mr.

What makes this question of subsidizing a at the rate of Thirty-five Dollars per ton for each Pacific service so difficult to deal with is the conflicting character of the statements which for some months have been made here or recorded in communications from America, New Zenland and Sydney. Since the visit of Mr. Collie from San Francisco, nine or ten months ago, we have had half a dozen different announcements about the service which was to be established by way of New Zealand and the United States, but each month has contradicted the intelligence of the previous one. There is certainly much more consistency about the reports which have come to us from Sydney as to Mr. Hall's intentions, although at present there is little or nothing before us as to the nature of the guarantee which Mr. Hall can give that his proposed plan shall be faithfully carried out, even if the subsidy is promised. In this latter respect Mr. Webb seems to be in a better position to give the guarantee as he is the actual owner of a powerful fleet. of steamers ready for the business. It is not likely that two services can long be maintained. if started-the one from New Zealand, the other from Sydney-and as Melbourne does not aim at being the starting point for a service eastward, the probability is that our Government will maintain their position of "masterly inactivity" until New South Wales and New Zealand have determined the question of the service to be supported. Even if both should commence an independent service, we have no absolute assurance at present that the scheme which shall command the assistance of New South Wales and Queensland will be Mr. Hall's, for we already hear of a rival scheme for employing the three steamers formerly belonging to the Panama Steam Navigation Company, the Rakaia, Rushine and Kaikours, and a company possessing such suitable vessels ready to hand would evidently prove a

powerful rival to Mr. Hall. Mr. Parkes proceeds to Tusmania for the purpose of interviewing the government of that colony. On his return from thence he will proceed to Adelaide and lay his proposals before the goveroment and the leading men there. He intends afterward to visit Brisbane on a similar errand, and then to take the route of the steamers and endeavor to arrange with the Islands, the United States and England. The Melbourne journals are giving Mr. Parkes very friendly and evan flat

teriffy notices. The Sydney Mail in making mention of the departure of the City of Melbourne on her first trip to San Francisco, mys it is to be hoped that she will inaugurate the route successfully. The date of departure from Sydney alternales with of the above Boards of Underwriters, will have to be certified to by the above agent to make them valid. [7-197] second part to well and faithfully perform the without reckoning cost of manufacture, of which with consideration, and happens just now to be disengaged alike from commercial and political July 15, 1871. Kanui and her husband executed | ties. He has opened his commission in Mel ent countries interested. His demand on New South Wales is £20,000, on Victoria and Queensland £10,000. He has already a promise from both of which countries Mr. Parkes is to be so credited if the mission seems likely to prosper.

The Sydney Morning Herald says: "The legislature of this colony authorized the government The defendants' counsel objected to the ad- to negotiate with any parties willing to contract missibility of the articles of agreement of Oct. 8, for five years for not more than £50,000 a year; 1869, in favor of the plaintiffs, (1.) because their of course leaving the contractors free to get any names do not appear therein, or (2,) to affect additional sum from any other colonies or coantries interested in the route. It is at present upcertain in what way the government will exercise Court against the first objection, exception was the permission thus granted; but the probability seems that the direct routs now commenced will become steadily developed and regularly organized. The subsidy promised is made conditional on the mail service being performed in forty-five days, and looking at the speed maintained on the American railroads and by the Cunard and other years on his land is void as within the Statute of Atlantic steamers, this is thought to be quite feasible. As the contract time of delivery at Sydney by the Suez route is fifty days and the average time of performance has been forty-nine, it is clear that if the American service realizes expectations, the Peninsular and Oriental Company will be forced to expedite the mail delivery by their vessels, which is a thing they can easily agreement made by the knowledge and consent do, and which the large subsidy they receive will enable them to do and still leave them a handsome profit." =

The Hobart Town Mercury of May 4th, says that Mr. Parkes had an interview on the previous government on the subject of the San Francisco mail scheme. Mr. Parkes laid before the cabinet his views on the subject, and urged upon them the importance of assisting the project by Tasmania. The Ministry discussed the matter, and after full consideration have come to the conclusion, that in the present state of the finances of the colony, they would not be justified in promising the subsidy asked in behalf of Mr. Hall's line of mail steamers between Sydney and San Francisco. This decision has been commu nicated to Mr. Parkes.

The Victorian and South Australian Govern ments also decline to take action at present. By the schooner Laviris, from Solemon Islands,

a report reaches us of a white woman and her child being held captives by the inhabitants of St. Christoval, Solomon Islands. Captain Brodie heard of the circumstances at one of the other slands of the group, where it was said that a white woman and child had been brought to St. Christoval in a canon. Upon the arrival of the schooner off the latter place, what appeared to be a white child was seen in the arms of a metive on the shore, and by the glass a woman, spps ently a European, was noticed; but she made no signs to those on hoard the schooner. Some of the natives made signals for the crew to land; but their wishes were not compiled with, as mak a step would have been highly imprudent, considering their hostile and transferous nature. Hancker Boy Herniel.